

**DOCUMENT RESUME**

01654 - [A1051932]

[Nonresponsive Bid on Construction Contract]. B-187889. April 6, 1977. 5 pp.

Decision re: Carter Construction Co., Inc.; by Robert P. Keller, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel; Procurement Law I.  
Budget Function: General Government; Other General Government (806).

Organization Concerned: Department of the Army; Corps of Engineers, New Orleans, LA.

Authority: 51 Comp. Gen. 352. 52 Comp. Gen. 604. B-176254 (1972). B-173243 (1971). B-165769 (1969). B-161969 (1967). B-170680 (1970). B-129351 (1956). B-173823 (1971). B-166603 (1969). B-170238 (1970). A.S.P.R. 2-201(b)(27).

The protester objected to the rejection of its bid on a construction contract as nonresponsive. Where the award is to be made as a whole to one bidder, the failure of the low bidder to include the unit and extended price for one item does not render the bid nonresponsive if the price for the omitted item can be determined from the total bid submitted. The bid may be adjusted to correct this mistake. (Author/SC)

01654

James Peaco  
Proc. I

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE: B-187889**

**DATE: April 4, 1977**

**MATTER OF: Carter Construction Company, Inc.**

**DIGEST:**

1. Where construction contract award is to be made as a whole to one bidder, failure of low bidder to include unit and extended price on bid schedule for one item as required by IFB does not render bid nonresponsive if price for omitted item can be determined from initial total bid submitted.
2. When allegation of mistake in bid asserts sum remaining after subtracting cost items was amount intended as bid for omitted item and that figure is supported by bidder's worksheets and was within pricing pattern established by Government estimate and amounts bid by other bidders for omitted item bid may be corrected.

Carter Construction Company, Inc. (Carter), protests the rejection of its bid as being nonresponsive under invitation for bids (IFB) No. DACW29-77-B-0012, issued by the United States Army Engineer District, Corps of Engineers (Corps), New Orleans, Louisiana.

The solicitation called for bank stabilization work to be performed on the Red River, Keller Revetment, Miller County, Arkansas. Carter submitted the lowest of the nine bids received and opened on November 9, 1976. However, at bid opening it was noticed that Carter omitted both the unit price and the estimated amount of item No. 7(f), Seeding, from its bidding schedule. The bidding schedule, incorporated into the IFB by Amendment No. 0002, provided spaces for the insertion of estimated quantities, unit prices, estimated amount (extended unit total price) and the total bid. The face of the schedule advised bidders that:

"NOTE: Award will be made as a whole to one bidder.

"Bidder will furnish unit prices for all line items listed on the Bid Form which require unit prices. If the bidder fails to do so, the Government will deem his unit price to be the quotient obtained from dividing the total price for that line item by the quantity."

On November 12, 1976, Carter alleged that an inadvertent error or omission occurred in Item No. 2(f) when copying its figures for the bid from the worksheet. Nevertheless, Carter stated that the total amount of the bid reflected the intended amount for the item. Therefore, Carter requested permission to correct this error. In addition, it was noted that a mathematical error was made in the extension for Item 2(b), Excavation and Grading. Carter's bid reflected quantity and unit prices for this item of 517,000 cubic yards and \$0.38, respectively. Carter's bid showed a calculated extension of its \$0.38 per cubic yard unit price as \$196,600 instead of the correct amount at \$196,460. This \$140 error was also reflected in Carter's total bid price of \$932,400 at bid opening. In accordance with the provisions of the solicitation, the contracting officer corrected the obvious arithmetic discrepancies. On November 15, 1976, Carter submitted a corrected bidding schedule which included unit and extended prices equal to the lump-sum price of \$1,500 for the omitted item. Therefore, the total amount of Carter's intended bid (\$932,260) on the new schedule only reflected the difference caused by the \$140 extension error.

On November 23, 1976, the contracting officer mailed Carter a formal letter of bid rejection. Carter was advised that its failure to enter a unit or total estimated price for the seeding constituted a material deviation from the requirements of the solicitation since Carter had failed to obligate itself to perform all the items set forth in the bidding schedule. This determination was based upon the requirements of Standard Form 22, paragraph 5b, of the IFB which stated that failure to submit bids for required bid items renders a bid nonresponsive. The IFB did permit the Government to establish a unit price by performing the appropriate division if a bidder omitted insertion of a unit price but did submit an extended price. However, the contracting officer concluded that if a bidder omitted both the unit and total estimated price, then no unit price could be established and thus the bidder could not be held legally bound to perform the item for which no bid had been submitted. Since the bid was found to be nonresponsive, the contracting officer determined that Carter's request for correction could not be granted under the rules and regulations applicable to mistakes in bid.

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The primary issue before our Office is whether Carter's bid is responsive to the invitation. In resolving questions of bid responsiveness, a bidder's intention must be determined from the face of the bid itself and evidence submitted after opening to show a bidder's intent may not be considered. 51 Comp. Gen. 352 (1971). With respect to the effect of price omissions, we stated in 52 Comp. Gen. 804 (1973) that:

"A bid is generally regarded as nonresponsive on its face for failure to include a price on every item as required by the IFB and may not be corrected. B-176254, September 1, 1972; B-173243, July 12, 1971; B-165769, January 21, 1969; B-162793, *supra*; B-161969, August 28, 1967. The rationale for these decisions is that where a bidder failed to submit a price for an item, he generally cannot be said to be obligated to perform that service as a part of the other services for which prices were submitted. B-170680, October 6, 1970; B-129351, October 9, 1956."

Accordingly, to allow bidders to correct a price omission after the allegation of a mistake in bid would in effect give the bidder an option to explain after opening whether his intent was to perform or not perform the work. Nevertheless, our Office has recognized limited exceptions to these rules.

We concur with the legal argument made by Carter's counsel that the facts of this case come within the exception to the general rule which was developed in our decisions B-166603, May 16, 1969, and B-173823, September 2, 1971 (hereafter referred to as Chaney & Hope). In those cases, the bidder failed to include the unit price and total cost of a bid item in his bidding schedule, but had included the total cost of the omitted bid item in the total bid price. We stated that under those circumstances the apparent low bid should be rejected for failure to bid upon an item only if the bidder's legal obligation to furnish the work described in that item as part of its total price was ambiguous. If there is no such ambiguity then the bids can be found responsive and eligible for award.

As in Chaney & Hope, paragraph 5(b) of the Instructions to Bidders (Standard Form 22) of this IFB provided in pertinent part that: "Where the bid form explicitly requires that the bidder bid on all items, failure to do so will disqualify the bid." However, as

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we previously stated in that case, if there is nothing in the bid form which explicitly requires bidders to quote prices on all items then a bid would not be automatically disqualified under paragraph 5b.

The IFB emphasized that award in this instance would be made as a whole to one bidder. However, paragraph 10(c) of Standard Form 22 states:

"(c) The Government may accept any item or combination of items of a bid, unless precluded by the invitation for bids or the bidder includes in his bid a restrictive limitation."

In addition, the invitation contained the following provision:

"4. GOVERNMENT'S PRIVILEGE IN MAKING AWARDS.  
(ASPR 2-201 (b)(x1) - 1973 APR). The Government further reserves the right to make award of any or all schedules of any bid, unless the bidder qualifies such bid by specific limitation; also to make award to the bidder whose aggregate bid on any combination of bid schedules is low. For the purpose of this Invitation for Bids, the word 'item' as used in paragraph 10(c) of Standard Form 22 shall be considered to mean 'schedule.'"

Our Office has construed the language of paragraph 4 as modifying paragraph 10(c) so as to preclude an award on less than a schedule-by-schedule basis, and where only one schedule is included in the invitation (as in this case) we have held that only one award, at the total schedule bid price, could be made. See B-170238, November 16, 1970. Since it was clear that the work solicited under this IFB would be awarded as a whole to one bidder, we must also conclude there was no possibility of an award for less than all the items listed for the total price indicated on the bidding schedule. Accordingly, Carter's bid must be considered to be responsive and the omitted item treated as a mistake if it can be shown that the total cost of the omitted bid item had been initially included in Carter's total bid.

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The record shows, after correction of the extension error, the sum of \$1,500 as the difference between the aggregate of the listed prices and the total price. Carter states this amount, based on a unit price of \$150 per acre, was its intended price for seeding the 10 acres set forth in Item 2(f). The Government estimate for this item was \$2,500 (\$250/acre). We note that the prices submitted by the second and third low bidders for this item were, respectively, \$1,000 (\$100/acre) and \$3,000 (\$300/acre). In view of this pattern of pricing and the worksheets and other documents submitted to document the alleged error, we find it reasonable to conclude that the \$1,500 difference in Carter's bid was the intended price for Item 2(f). Therefore, the protest is sustained and Carter's corrected low bid should be considered for award if otherwise proper.

*Byrd*  
Acting Comptroller General  
of the United States